

REMARKS

Status of the claims

Claims 1-33 and 37-41 are pending and under examination. No claim is allowed. Applicants respectfully request reconsideration and withdrawal of finality in the Office Action mailed September 4, 2008 as premature.

Formal Matters

Applicants thank the Examiner for the courtesy of a telephonic interview between Examiner Fay and the undersigned on September 24, 2008, and subsequent voicemail messages, to discuss the imposition of finality in this case. A formal interview summary is respectfully requested.

Premature finality

Applicants respectfully point out that the Action mailed September 4, 2008 includes rejections of claims 27, 28, 33 and 37-41 under 35 U.S.C. § 103(a), as allegedly unpatentable over WO 98/34644, which have not been previously asserted. These new rejections clearly demonstrate that the claims were not rejected solely for the reasons of record in the previous Action, mailed November 29, 2007, which provided no basis for the rejection of claims 27, 28, 33 and 37-41.

Therefore, Applicants respectfully submit that the assertion of “final” status in the Action mailed September 4, 2008 is premature because new grounds of rejection were raised with respect to claims 27, 28, 33 and 37-41. Reconsideration and withdrawal of “finality” of the Action of record respectfully requested.

CONCLUSION

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue. If it is determined that a telephone conference would expedite the prosecution of this application, the Examiner is invited to telephone the undersigned at the number given below.

In the event the U.S. Patent and Trademark office determines that an extension and/or other relief is required, applicant petitions for any required relief including extensions of time and authorizes the Commissioner to charge the cost of such petitions and/or other fees due in connection with the filing of this document to **Deposit Account No. 03-1952** referencing **docket No. 273012011800**. However, the Commissioner is not authorized to charge the cost of the issue fee to the Deposit Account.

Dated: November 4, 2008

Respectfully submitted,

Electronic signature: /Leslie A. Robinson/
Leslie A. Robinson

Registration No.: 54,403
MORRISON & FOERSTER LLP
12531 High Bluff Drive, Suite 100
San Diego, California 92130-2040
(858) 314-7692